

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARL ASHLEY,

Plaintiff,

Case Number: 10-10512

v.

HONORABLE AVERN COHN

GERALDINE WILSON, DENNIS CRANE,
and KATHERINE CORRIGAN,

Defendants.

_____ /

ORDER
ADOPTING REPORT AND RECOMMENDATION (Doc. No. 5)
AND
DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL
COMPLAINT (Doc. No. 7)
AND
DISMISSING CASE

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff Carl Lee Ashley, proceeding pro se and in forma pauperis, filed a complaint claiming defendants violated his constitutional rights. Specifically, plaintiff claims that defendants violated his right to due process, his right to receive mail, and his state right to a fair hearing when he was not allowed to receive a 2010 calendar which came to him through the mail from an approved vendor. The case was referred to a magistrate judge for all pre-trial proceedings. The magistrate judge issued a report and recommendation (MJRR)

recommending that the complaint be dismissed under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A for failure to state a claim upon which relief may be granted (Doc. No. 5).

Before the Court are plaintiff's objections to the MJRR (Doc. No. 8). Also before the Court is plaintiff's Motion for Leave to File Supplemental Complaint (Doc. No. 7). For the reasons that follow, the objections will be overruled, the MJRR will be adopted, plaintiff's motion to amend will be denied, and the case will be dismissed.

II.

A.

As noted in the MJRR, the Court is required to sua sponte dismiss an in forma pauperis complaint before service on a defendant if it determines that the action is frivolous or malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. See 42 U.S.C. § 1997(e)(c); 28 U.S.C. § 1915(e)(2)(B). A complaint is frivolous if it lacks an arguable basis either in law or in fact. See Denton v. Hernandez, 504 U.S. 25, 31 (1992); Neitzke v. Williams, 490 U.S. 319, 325 (1989). A pro se civil rights complaint is to be construed liberally. See Haines v. Kerner, 404 U.S. 519, 520-21 (1972).

B.

A district court must conduct a de novo review of the parts of a magistrate judge's report and recommendation to which a party objects. 28 U.S.C. § 636(b)(1). The district "court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate" judge. Id.

A general objection, or one that merely restates the arguments previously presented, is not sufficient to alert the court to alleged errors on the part of the magistrate judge. An “objection” that does nothing more than state a disagreement with a magistrate judge's suggested resolution, or simply summarizes what has been presented before, is not an objection as that term is used in this context. Howard v. Sec'y of Health and Human Servs., 932 F.2d 505, 508 (6th Cir. 1991).

III.

Having carefully reviewed plaintiff's objections, the Court agrees with the magistrate judge. As fully explained in the MJRR, plaintiff has not made out a constitutional claim stemming from the rejection of the calendar and the Court declines to entertain his state law claim.

As to plaintiff's motion for leave to file a supplemental complaint, apparently to add a retaliation claim concerning events since the filing of the complaint, it must be denied. The Court does not have discretion to allow prisoners filing suit in forma pauperis to amend their complaint to avoid sua sponte dismissal under 28 U.S.C. § 1915(e). Shorter v. Campbell, No. 02-3812, 59 F. App'x 673, 675 (6th Cir. Feb.20, 2003) (unpublished) (“As the plaintiffs' complaint was dismissible under 42 U.S.C. §§ 1915(e) and 1915A, they did not have the right to amend their complaint prior to dismissal.”); Benson v. O'Brian, 179 F.3d 1014, 1015-16 (6th Cir.1999); McGore v. Wrigglesworth, 114 F.3d 601, 612 (6th Cir. 1997).

IV.

For the reasons stated above, plaintiff's objections to the MJRR are OVERRULED. The findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court.

Plaintiff's motion for leave to file a supplemental complaint is DENIED.

The complaint is DISMISSED under 28 U.S.C. §§ 1915(e)(2)(B)(I) and 1915A(b)(1) and 42 U.S.C. § 1997e(c).

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: March 25, 2010

I hereby certify that a copy of the foregoing document was mailed to Carl Ashley, 136985, Saginaw Correctional Facility, 9625 Pierce Road, Freeland, MI 48623 and the attorneys of record on this date, March 25, 2010, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160